

## TELEFAX COVER SHEET

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TO: Commissioner of Patents  
FAX NO.: 703-872-9314  
FROM: Eamon J. Wall  
DATE: 12/12/02  
MATTER: Serial No. 09/406,353 Filed: 7/31/98  
DOCKET NO.: DIVA/044  
APPLICANT: Giammaressi

The following has been received in the U.S. Patent and Trademark Office on the date of this facsimile:

<input type="checkbox"/> Petition	<input type="checkbox"/> Transmittal Letter (2 copies)
<input type="checkbox"/> Disclosure Statement & PTO-1449	<input type="checkbox"/> Fee Transmittal (2 copies)
<input type="checkbox"/> Priority Document	<input checked="" type="checkbox"/> Deposit Account Transaction
<input type="checkbox"/> Drawings ( <u>    </u> sheets) informal	<input checked="" type="checkbox"/> Facsimile Transmission Certificate
<input type="checkbox"/> Amendment	dated <u>                    </u>
<input checked="" type="checkbox"/> CPA REQUEST TRANSMITTAL	<input checked="" type="checkbox"/> Preliminary Amendment <u>    </u>
<input checked="" type="checkbox"/> RECEIPT FOR FACSIMILE TRANSMITTED	
CPA	

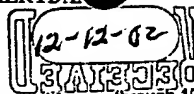
CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. §1.6

I hereby certify that this correspondence is being transmitted by facsimile to the Assistant  
Commissioner for Patents, Washington, DC 20231 on 12/12/02  
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LAURA E. CRATER  
Name of person signing this certificate

*Laura E. Crater* 12/12/02  
Signature and date

Official



PTO/SB/29 (10-00)

Approved for use through 10/31/2002. OMB 0651-0032

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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## CONTINUED PROSECUTION APPLICATION (CPA) REQUEST TRANSMITTAL

Submit an original, and a duplicate for fee processing

CHECK BOX, if applicable

☐ DUPLICATE

(Only for Continuation or Divisional applications under 37 CFR 1.53(d))

Address to:

Commissioner for Patents  
Box CPA  
Washington, DC 20231

Attorney Docket No.  
of Prior Application

DIVA/044

First Named Inventor

Tom Giammaressi

Examiner Name

Senfi, Behrooz M.

Group / Art Unit

2813

TRANSMISSION.

VIA FACSIMILE

This is a request for a ☒ continuation or ☐ divisional application under 37 CFR 1.53(d),  
(continued prosecution application (CPA)) of prior application number 09/406,353  
filed on 9/28/99, entitled SERVICE RATE CHANGE METHOD AND APPARATUS

### NOTES

**FILING QUALIFICATIONS:** The prior application identified above must be a nonprovisional application that is either: (1) complete as defined by 37 CFR 1.51(b), or (2) the national stage of an international application in compliance with 35 U.S.C. 371. Effective May 29, 2000, a CPA may only be filed in a utility or a plant application if the prior nonprovisional application was filed before May 29, 2000. A CPA may be filed in a design application regardless of the filing date of the prior application. See "Request for Continued Examination Practice changes to and Provisional Application Practice," Final Rule, 65 Fed. Reg. 50092 (Aug. 16, 2000); Interim Rule, 65 Fed. Reg. 14865 (Mar. 20, 2000), 1233 Off. Gaz. Pat. Office (Apr. 11, 2000).

**C-I-P NOT PERMITTED:** A continuation-in-part application cannot be filed as a CPA under 37 CFR 1.53(d), but must be filed under 37 CFR 1.53(b).

**EXPRESS ABANDONMENT OF PRIOR APPLICATION:** The filing of this CPA is a request to expressly abandon the prior application as of the filing date of the request for a CPA. 37 CFR 1.53(b) must be used to file a continuation, divisional, or continuation-in-part of an application that is not to be abandoned.

**ACCESS TO PRIOR APPLICATION:** The filing of this CPA will be construed to include a waiver of confidentiality by the applicant under 35 U.S.C. 122 to the extent that any member of the public who is entitled under the provisions of 37 CFR 1.14 to access to, copies of, or information concerning, the prior application may be given similar access to, copies of, or similar information concerning, the other application or applications in the file jacket.

**35 U.S.C. 120 STATEMENT:** In a CPA, no reference to the prior application is needed in the first sentence of the specification and none should be submitted. If a sentence referencing the prior application is submitted, it will not be entered. A request for a CPA is the specific reference required by 35 U.S.C. 120 and to every application assigned the application number identified in such request, 37 CFR 1.78(a).

**WARNING:** Information on this form may become public. Credit card information should not be included on this form.  
Provide credit card information and authorization on PTO-2038.

1. ☐ Enter the unentered amendment previously filed on under 37 CFR 1.116 in the prior nonprovisional application
2. ☒ A preliminary amendment is enclosed.
3. ☐ This application is filed by fewer than all the inventors named in the prior application, 37 CFR 1.53 (d)(4).
  - a. ☐ DELETE the following inventor(s) named in the prior nonprovisional application:  
\_\_\_\_\_
  - b. ☐ The inventor(s) to be deleted are set forth on a separate sheet attached hereto.
4. ☐ A new power of attorney or authorization of agent (PTO/SB/81) is enclosed.
5. ☐ Information Disclosure Statement (IDS) is enclosed:
  - a. ☐ PTO-1449
  - b. ☐ Copies of IDS Citations

12/18/2002 SMOORE 00000012 501316

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(Page 1 of 2)

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PTO/SB/29 (10-00)

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CLAIMS	(1) FOR	(2) NUMBER FILED	(3) NUMBER EXTRA	(4) RATE	(5) CALCULATIONS
TOTAL CLAIMS (37 CFR 1.16(c) or (f))		28-20 =	8	x \$18	144.00
INDEPENDENT CLAIMS (37 CFR 1.16(b) or (f))		2 - 3 =	0	x \$84	00.00
MULTIPLE DEPENDENT CLAIMS (if applicable) (37 CFR 1.16(d))				x \$280	00.00
				BASIC FEE (37 CFR 1.16)	740.00
				Total of above Calculations =	884.00
Reduction by 50% for filing by small entity (Note 37 CFR 1.27).					442.00
* Reissue claims in excess of 20 and over original patent.				TOTAL =	442.00
** Reissue independent claims over original patent.					

6. ☒ Small entity status: Applicant claims small entity status. See 37 CFR 1.27.
7. The Commissioner is hereby authorized to credit overpayments or charge the following fees to Deposit Account No 50-1316:
- a. ☒ Fees required under 37 CFR 1.16.
- b. ☒ Fees required under 37 CFR 1.17.
- c. ☐ Fees required under 37 CFR 1.18.
8. ☐ A check in the amount of \$ \_\_\_\_\_ is enclosed.
9. ☐ Payment by credit card. Form PTO-2038 is attached.
10. ☐ Applicant requests suspension of action under 37 CFR 1.103(b) (fee under 37 CFR 1.17(l) enclosed).
11. ☐ New Attorney Docket Number, if desired  
*[Prior application Attorney Docket Number will carryover to this CPA unless a new Attorney Docket Number has been provided herein.]*
12. a. ☒ Receipt For Facsimile Transmitted CPA (PTO/SB/29A)
- b. ☐ Return Receipt Postcard (Should be specifically itemized, See MPEP 503)
13. ☐ Other: \_\_\_\_\_

**NOTE:** The prior application's correspondence address will carry over to this CPA UNLESS a new correspondence address is provided below.

## 12. NEW CORRESPONDENCE ADDRESS

<input checked="" type="checkbox"/> Customer Number or Bar Code Label		26,291 (Insert Customer No. or Attach bar code label here)		or <input type="checkbox"/> New correspondence address below	
Name	MOSER, PATTERSON & SHERIDAN, LLP				
Address	595 Shrewsbury Avenue, Suite 100				
City	Shrewsbury	State	NJ	Zip Code	07702
Country	USA	Telephone	732-530-9404	Fax	732-530-9808

## 13. SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED

Name (Print /Type)	Eamon J. Wall
Signature	<i>EJ Wall</i>
Registration No. (Attorney/Agent)	39,414
Date	

PTO/SB/29A (08-00)

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MOSER, PATTERSON & SHERIDAN, LLP  
595 Shrewsbury Avenue, Suite 100  
Shrewsbury, New Jersey 07702

RECEIPT  
FOR  
FACSIMILE TRANSMITTED  
CPA

(To accompany a request for a  
Continued Prosecution Application  
(CPA) under 37 CFR 1.53(d) filed by  
facsimile transmission)

**NOTE:** By this receipt, the USPTO (a) acknowledges that a request for a CPA was filed by facsimile transmission on the date stamped below by the USPTO and (b) Verifies only that the application number provided by the applicant on this receipt is the same as the application number provided on the accompanying request for a CPA. This receipt CANNOT be used to acknowledge receipt of any paper(s) other than the request for a CPA.

## 2. APPLICATION IDENTIFICATION:

(Provide at least enough information to identify the application)

## a. For prior application

Application No: 09/406,353  
Filing Date: 9/18/99  
Title: SERVICE RATE CHANGE METHOD AND APPARATUS  
Attorney Docket No: DIVA/044  
First Named Inventor: GIAMMARESSI

## b. For instant CPA application

New Attorney Docket No: DIVA/044  
(If applicable)

The USPTO date stamp, which appears in the box to the right, is an acknowledgement by the USPTO of receipt of a request for a CPA filed by facsimile transmission on the date indicated below.

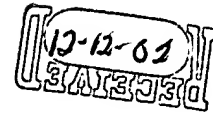
(THIS AREA FOR PTO DATE STAMP USE)

USPTO HANDLING INSTRUCTIONS

Please stamp area to the right with the date the complete transmission of the request for a CPA was received in the USPTO and also include the USPTO organization name that provided the date stamp (stamp may include both items). Verify that the application number provided by applicant on this receipt is the same as the application number provided by applicant on the request for a CPA accompanying this receipt. If there is an inconsistency between the application number provided on this receipt and the request for a CPA, strike through the inconsistent application number provided on this receipt and insert the correct application number, if possible. Then place in a window envelope and mail.

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IN THE UNITED STATES  
PATENT AND TRADEMARK OFFICE

#8/B  
12-18-02

**PATENT APPLICATION**

Applicant(s): **Tom Giammaressi**  
Case: **DIVA/044**  
Serial No.: **09/406,353** Filed: **9/28/99**  
Examiner: **Senfi, Behrooz M.** Group Art Unit: **2613**  
Title: **SERVICE RATE CHANGE METHOD AND APPARATUS**

**PRELIMINARY AMENDMENT**

COMMISSIONER FOR PATENTS  
WASHINGTON, D.C. 20231

S I R:

This Amendment is being filed in response to the non-final Office Action dated **September 12, 2002**. Please amend the above-identified patent application as follows:

**IN THE SPECIFICATION**

Please amend the specification as follows:

**Please replace the paragraph beginning on page 8, line 27 as follows:**

At step 206 bandwidth sufficient to enable a navigation function is allocated to the subscriber or customer of step 204. For example, a suitable navigation function is described in U.S. Patent 6,208,335 entitled METHOD AND APPARATUS FOR PROVIDING A MENU STRUCTURE FOR AN INTERACTIVE INFORMATION DISTRIBUTION SYSTEM and issued on March 27, 2001, which is incorporated herein by reference in its entirety. The disclosed navigation function provides an interactive means for a subscriber to browse and select for subsequent viewing video information within a video and demand system. For